

Maine Revised Statutes
Title 12: CONSERVATION
Chapter 220: BUREAU OF PARKS AND PUBLIC LANDS

§1862. SUBMERGED AND INTERTIDAL LANDS OWNED BY STATE

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commercial fishing activity" means any activity involving the landing or processing of shellfish, finfish or other natural products of the sea or other activities directly related to landing or processing shellfish, finfish or natural sea products. "Commercial fishing activity" includes loading or selling those products and fueling. [1997, c. 678, §13 (NEW).]

B. "Dockominium" means slip space that is sold or leased by a lessee of submerged lands to a boat or vessel owner for more than one year. [1997, c. 678, §13 (NEW).]

C. "Fair market rental value," for all uses of submerged lands except slip space rented or otherwise made available for private use for a fee, means the municipally assessed value per square foot for the adjacent upland multiplied by a reduction factor plus a base rate based on the use of the leased submerged land as specified in this section. This value is then multiplied by the square foot area of the proposed lease area to determine the annual rental rate. For slip space rented or otherwise made available for private use for a fee, the fair market rental value is the gross income from that space multiplied by a reduction factor as specified in this section based on the use of the leased submerged land. [2009, c. 316, §1 (AMD); 2009, c. 316, §7 (AFF).]

D. "Gross income" means the total annual income received by a lessee from seasonal or transient rental to the general public of slip space over submerged land. For dockominiums, slips that are part of a residential condominium, boat clubs and other facilities with slip space that is not rented or leased to the general public, the director shall determine gross income by calculating a regional average slip space rental fee and applying that to the portion of total linear length of slip space made available to private users for any portion of that year. [1997, c. 678, §13 (NEW).]

D-1. [2009, c. 316, §7 (AFF); 2009, c. 316, §2 (RP).]

E. "Occupying," in terms of a structure or alteration, means covering the total area of the structure or alteration itself to the extent that the area within its boundaries is directly on or over the state-owned lands. [1997, c. 678, §13 (NEW).]

E-1. "Offshore project" means a project that extends beyond localized development adjacent to a single facility or property. "Offshore project" includes, but is not limited to, tanker ports, ship berthing platforms requiring secondary transport to shore, an interstate or international pipeline or cable and similar projects. "Offshore project" does not include a shore-based pier, marina or boatyard or utility cable and pipelines serving neighboring communities or islands. "Offshore project" does not include a wind, tidal, wave or other renewable ocean energy project. [2009, c. 615, Pt. B, §1 (AMD).]

F. "Permanent" means occupying submerged and intertidal lands owned by the State during 7 or more months during any one calendar year. [1997, c. 678, §13 (NEW).]

F-1. "Renewable ocean energy project" means one or more of the following located in coastal wetlands, as defined by Title 38, section 480-B, subsection 2:

- (1) An offshore wind power project, as defined by Title 38, section 480-B, subsection 6-A or by Title 38, section 482, subsection 8, and with an aggregate generating capacity of 3 megawatts or more;
- (2) A community-based offshore wind energy project, as defined by section 682, subsection 19;

(3) A hydropower project, as defined by Title 38, section 632, subsection 3, that uses tidal or wave action as a source of electrical or mechanical power; or

(4) Other development activity that produces electric or mechanical power solely through use of wind, waves, tides, currents, ocean temperature clines, marine biomass or other renewable sources in, on or over the State's coastal waters, as defined by section 6001, subsection 6, to the 3-mile limit of state ownership recognized under the federal Outer Continental Shelf Lands Act, 43 United States Code, Chapter 29, Subchapter III (2009), and that includes both "generating facilities," as defined by Title 35-A, section 3451, subsection 5 and "associated facilities," as defined by Title 35-A, section 3451, subsection 1. [2009, c. 615, Pt. B, §1 (NEW).]

G. "Slip space" means the area adjacent to a pier or float that is used for berthing a boat. [1997, c. 678, §13 (NEW).]

[2009, c. 615, Pt. B, §1 (AMD).]

2. Submerged lands leasing program. The director may conduct a submerged lands leasing program under which, except as otherwise provided by subsection 13, the director may lease, for a term of years not exceeding 30 and with conditions the director considers reasonable, the right to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State. The director may refuse to lease submerged lands if the director determines that the lease will unreasonably interfere with customary or traditional public access ways to or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands.

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures and for nonpermanent structures occupying a total of 500 square feet or more of submerged land or occupying a total of 2,000 square feet or more of submerged land if used exclusively for commercial fishing activities:

(1) Except as otherwise provided by subsection 13, the director shall charge the lessee a rent that practically approximates the fair market rental value of the submerged land. The reduction factors and base rate for use categories are as follows:

(a) A reduction factor of 0% with no base rate or rental fee for nonprofit organizations or publicly owned facilities that offer free public use or public use with nominal user fees. Public uses include, but are not limited to, municipal utilities and facilities that provide public access to the water, town wharves, walkways, fishing piers, boat launches, parks, nature reserves, swimming or skating areas and other projects designed to allow or enhance public recreation, fishing, fowling and navigation and for which user fees are used exclusively for the maintenance of the facility;

(b) A reduction factor of 0.1% plus a base rate of \$0.025 per square foot for commercial fishing uses of renewable aquatic resources. Commercial uses of renewable aquatic resources include, but are not limited to, facilities that are directly involved in commercial fishing activities. Such facilities include, but are not limited to, fish piers, lobster impoundments, fish processing facilities and floats or piers for the storage of gear;

(c) A reduction factor of 2% for any slip space rented or otherwise made available for private use by commercial fishing boats for a fee;

(d) A reduction factor of 0.2% plus a base rate of \$0.05 per square foot for water-dependent commerce, industry and private uses. Water-dependent commerce, industry and private uses other than commercial uses of renewable aquatic resources include, but are not limited to, all facilities that are functionally dependent upon a waterfront location, can not reasonably be located or operated on an upland site or are essential to the operation of the marine industry. Such facilities include, but are not limited to, privately owned piers and docks, cargo ports, private boat ramps, shipping and ferry terminals, tug and barge facilities, businesses that are

engaged in watercraft construction, maintenance or repair, aquariums and the area within marinas occupied by service facilities, gas docks, breakwaters and other structures not used for slip space;

(e) A reduction factor of 4% for any slip space rented or otherwise made available for private use for recreational boats for a fee; and

(f) A reduction factor of 0.2% for upland uses and fill located on submerged lands prior to July 1, 2009 and 0.4% for new upland uses and fill after July 1, 2009 plus a base rate of \$0.05 per square foot. Upland uses include, but are not limited to, all uses that can operate in a location other than on the waterfront or that are not essential to the operation of the marine industry. These facilities include, but are not limited to, residences, offices, restaurants and parking lots. Fill must include the placement of solid material other than pilings or other open support structures upon submerged lands.

If the director determines that the municipally assessed value of the adjacent upland is not an accurate indicator of the value of submerged land, the director may make adjustments in the municipally assessed value so that it more closely reflects the value of comparable waterfront properties in the vicinity or require the applicant to provide an appraisal of the submerged land. The appraisal must be approved by the director.

For offshore projects where municipally assessed value for the adjacent upland or submerged lands appraisals are unavailable or the director determines that such assessment or appraisals do not accurately indicate the value of the submerged land, the director may establish the submerged lands annual rental rate and other public compensation as appropriate by negotiation between the bureau and the applicant. In such cases the annual rent and other public compensation must take into account the proposed use of the submerged lands, the extent to which traditional and customary public uses may be diminished, the public benefit of the project, the economic value of the project and the avoided cost to the applicant. If the State's ability to determine the values listed in this paragraph or to carry out negotiations requires expertise beyond the program's capability, the applicant must pay for the costs of contracting for such expertise;

(2) After October 1, 1990, the director may revalue all existing rents to full fair market rental value. Rents for all uses except slip space may be adjusted annually as needed over a period not to exceed 5 years until the full fair market rental value is reached. After the full fair market rental value is reached, the director may revalue rents for all uses except slip space every 5 years based on changes in municipally assessed value and programmatic cost adjustments to the base rate. Adjustments to the base rate may not exceed 4% per year. Rents for slip space may fluctuate annually depending on the gross income of the facility;

(3) Except as otherwise provided by subsection 13, the director may also lease a buffer zone of not more than 30 feet in width around a permanent structure located on submerged or intertidal land, as long as the lease is necessary to preserve the integrity and safety of the structure and that the Commissioner of Marine Resources consents to that lease;

(4) Any existing or proposed lease may be subleased for the period of the original lease for the purpose of providing berthing space for any boat or vessel;

(5) No portion of an existing or proposed lease may be transferred from a person subleasing that portion to provide berthing space for any boat or vessel except for a transfer to heirs upon death of the sublessee holder or a transfer to the original leaseholder subject to terms agreed to by the lessor and sublessee at the time of the sublease. This subparagraph does not apply to any subleasing arrangements entered into before June 15, 1989; and

(6) The director may grant the proposed lease if the director finds that, in addition to any other findings that the director may require, the proposed lease:

(a) Will not unreasonably interfere with navigation;

(b) Will not unreasonably interfere with fishing or other existing marine uses of the area;

(c) Will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities; and

(d) Will not unreasonably interfere with ingress and egress of riparian owners.

[2009, c. 615, Pt. B, §1 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV).]

B. For dredging, impounded areas and underwater cables and pipelines, the director shall develop terms and conditions the director considers reasonable. [1997, c. 678, §13 (NEW).]

C. The director shall charge an administrative fee of \$100 for each lease in addition to any rent. A fee of \$200 must be charged for a lease application that is received after work has begun for the proposed project. [2003, c. 254, §1 (AMD).]

D. Except as otherwise provided by subsection 13, the minimum rent to which any lease is subject is \$150 per year. [2009, c. 615, Pt. B, §1 (AMD).]

E. [2007, c. 540, §1 (AMD); T. 12, §1862, sub-§2, ¶E (RP).]

F. Within 15 days of receipt of a copy of an application submitted to the Department of Environmental Protection for a general permit under Title 38, section 480-HH or Title 38, section 636-A, the director shall, if requested by the applicant, provide the applicant a lease option, to be effective on the date of receipt of the application, for use of state-owned submerged lands that are necessary to fulfill the project purposes as identified in the application. Within 30 days of receiving notice and a copy of a general permit granted pursuant to Title 38, section 480-HH or Title 38, section 636-A, the director shall waive the review procedures and standards under this section and issue a submerged lands lease for the permitted activity. The term of the lease must be consistent with that of the permit, including any extension of the permit, and the period of time needed to fully implement the project removal plan approved pursuant to Title 38, section 480-HH or Title 38, section 636-A, as applicable. The director may include lease conditions that the director determines reasonable, except that the conditions may not impose any requirement more stringent than those in a permit granted under Title 38, section 480-HH or Title 38, section 636-A, as applicable, and may not frustrate achievement of the purpose of the project. [2009, c. 270, Pt. B, §1 (NEW).]

In making findings pursuant to this subsection regarding a renewable ocean energy project, the director shall adopt all pertinent findings and conclusions in a permit issued for the project pursuant to chapter 206-A or pursuant to Title 38, chapter 3, subchapter 1, article 5-A or 6 or Title 38, chapter 5, subchapter 1, article 1, subarticle 1-B, as applicable, and may condition issuance of a lease for such a project on receipt of all pertinent approvals by the Department of Environmental Protection or the Maine Land Use Planning Commission, as applicable, and other conditions the director considers reasonable.

[2009, c. 615, Pt. B, §1 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2011, c. 682, §38 (REV); 2013, c. 405, Pt. A, §24 (REV).]

2-A. Lease renewal. A lessee who is in compliance with all terms of that person's lease may apply at any time to renew the lease. The director shall approve the lease renewal if the existing lease complies with or can be amended to comply with all applicable laws, rules and public trust principles in effect at the time of the renewal application. This subsection applies to all leases in effect on the effective date of this subsection and to all leases executed on or subsequent to the effective date of this subsection.

[1997, c. 678, §13 (NEW).]

3. Easements. The director may grant, upon terms and conditions the director considers reasonable, assignable easements for a term not to exceed 30 years for the use of submerged and intertidal lands for the purposes permitted in subsection 2. The grantee shall pay an administrative fee of \$100 for each easement at the time of processing and a registration fee of \$50 due every 5 years. An administrative fee of \$200 must be charged for an easement application that is received after work has begun for the proposed project. The director may refuse to grant an easement for the use of submerged and intertidal lands if the director

determines that the easement will unreasonably interfere with customary or traditional public access ways to or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands. The director may grant an easement for submerged and intertidal lands if a structure:

- A. Is for the exclusive benefit of the abutting upland owner for charitable purposes as defined in the United States Internal Revenue Code, Section 501, (c) (3); [1997, c. 678, §13 (NEW) .]
- B. Occupies a total of not more than 500 square feet of submerged and intertidal land for any lawful purpose and is permanent; or [1997, c. 678, §13 (NEW) .]
- C. Occupies a total of not more than 2,000 square feet of submerged and intertidal land for the exclusive purpose of commercial fishing activities and is permanent. [1997, c. 678, §13 (NEW) .]

[2003, c. 254, §2 (AMD) .]

4. Adjustment of terms. The director may adjust from time to time, consistent with the provisions of this section, conditions applicable to any leasehold or easement entered into under this section in any parcel of state-owned submerged or intertidal land. Rent may not be charged for leases entered into before July 1, 1984 if the actual use of the leased land is eligible for an easement under subsection 3.

[1997, c. 678, §13 (NEW) .]

5. Review of uses. In the case of easements, the director shall review from time to time the purposes for which the land conveyed has actually been used, and, in the event any such purpose is found to be inconsistent with the criteria set forth in subsection 3 for eligibility for an easement, the easement must terminate and the director may enter into a leasehold agreement with the holder of the easement in accordance with subsection 2.

[1997, c. 678, §13 (NEW) .]

6. Constructive easements. The owner of any structure actually upon submerged and intertidal lands on October 1, 1975 is deemed to have been granted a constructive easement for a term of 30 years on the submerged land directly underlying the structure. Beginning on January 1, 1991, the bureau shall undertake a registration program for all structures granted constructive easements. Constructive easements are subject to administrative and registration fees for easements pursuant to subsection 3. The director shall develop procedures, rules and registration forms necessary to accomplish the purposes of this subsection. The bureau shall complete the registration of constructive easements on or before December 31, 1996.

[1997, c. 678, §13 (NEW) .]

7. Consultation. The director shall consult with the commissioner, the Commissioner of Marine Resources, the Commissioner of Inland Fisheries and Wildlife and any other agencies or organizations the director considers appropriate in developing and implementing terms, conditions and consideration for conveyances under this section. When rental terms under subsection 13 for a renewable ocean energy project are at issue, the director also shall consult with the Public Utilities Commission. The director may determine to make proprietary conveyances under this section solely on the basis of the issuance of environmental or regulatory permits by other appropriate state agencies.

[2009, c. 615, Pt. B, §1 (AMD) .]

8. Rules.

[2001, c. 604, §12 (RP) .]

9. Public compensation. Except as otherwise provided by subsection 13, with respect to any lease, including, but not limited to, leases for offshore projects, when the director determines that the public should be compensated for the loss or diminution of traditional and customary public uses resulting from the activities proposed by the lessee, the director may negotiate with the lessee to provide public access improvements such as walkways, boat launching ramps, parking space or other facilities or negotiate a fee in lieu of such improvements as a condition of the lease. The determination of loss or diminution of traditional and customary public uses and appropriate public compensation must be made in consultation with local municipal officials.

[2009, c. 615, Pt. B, §1 (AMD) .]

10. Aquaculture exemption. A lease for the use of lands under this section is not required for the development and operation of any aquaculture facility if the owner or operator of the facility has obtained a lease from the Commissioner of Marine Resources under section 6072. Ancillary equipment and facilities permanently occupying submerged lands on the lease site and not explicitly included in the lease granted by the Commissioner of Marine Resources are not exempt from the requirements of this section.

[1997, c. 678, §13 (NEW) .]

11. Revenues. Except as otherwise provided by subsection 13, all revenues from the bureau's activities under this section accrue to the Submerged Lands Fund established in section 1861.

[2009, c. 615, Pt. B, §1 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

12. Annual report dealing with submerged lands. The bureau shall prepare and submit a written report on or before March 1st of each year to the joint standing committee of the Legislature having jurisdiction over submerged lands matters. The report must include the following information:

A. A complete account of the income and expenditures pertaining to submerged lands during the preceding fiscal year; [2013, c. 256, §9 (AMD) .]

B. A summary of the bureau's management activities during the preceding fiscal year regarding leases, easements and other appropriate subjects; [2013, c. 256, §10 (AMD); 2013, c. 405, Pt. A, §24 (REV) .]

C. A summary of any Shore and Harbor Management Fund grants made under section 1863; and [1997, c. 678, §13 (NEW) .]

D. A description of the proposed budget, including allocations for the bureau's dedicated funds and any revenues of the bureau from leases and easements for the following fiscal year. [1997, c. 678, §13 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

The joint standing committee of the Legislature having jurisdiction over submerged lands matters shall review the report and submit a written recommendation regarding the bureau's proposed budget to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on or before March 15th of each year.

[2013, c. 256, §§9, 10 (AMD); 2013, c. 405, Pt. A, §24 (REV) .]

13. Special provisions regarding renewable ocean energy projects. The provisions in this subsection govern renewable ocean energy projects.

A. The Legislature finds that:

- (1) The State's coastal waters and submerged lands provide unique and valuable opportunities for development of wind and tidal power and, potentially, other indigenous, renewable ocean energy resources, such as wave power;
- (2) Climate change and related degradation or loss of marine resources and related human uses make development of and transition to use of renewable ocean energy resources consistent with sound stewardship of the State's public trust resources;
- (3) Proper and efficient functioning of certain generation and associated facilities that use the energy potential of the State's indigenous, renewable ocean energy resources depends upon their deployment in a marine environment and, accordingly, such facilities may to the extent necessary be located in, on or over state-owned submerged lands; and
- (4) With appropriate provision for avoidance and minimization of and compensation for harm to existing public trust-related uses and resources, such as fishing and navigation; consideration of potential adverse effects on existing uses of the marine environment; restoration of affected lands upon completion of authorized uses pursuant to permitting criteria; and adequate compensation to the public for use of its trust resources pursuant to state submerged lands leasing criteria, development of these renewable ocean energy resources in appropriate locations promises significant public trust-related benefits to the people of this State for whom the State holds and manages submerged lands and their resources. [2009, c. 615, Pt. B, §1 (NEW).]

B. In accordance with the findings in paragraph A, the following provisions apply to an application for a lease or easement for a renewable ocean energy project.

- (1) No more than 30 days prior to filing applications in accordance with this paragraph, an applicant for a lease or easement for a renewable ocean energy project shall participate in a joint interagency preapplication meeting that includes the Department of Marine Resources and is in accordance with permitting procedures of the Department of Environmental Protection or the Maine Land Use Planning Commission, as applicable.
- (2) An applicant for a lease or easement for a renewable ocean energy project must file and certify to the director that it has filed completed applications for requisite state permits under chapter 206-A or Title 38, chapter 3, subchapter 1, article 5-A or 6 or Title 38, chapter 5, subchapter 1, article 1, subarticle 1-B, as applicable, prior to or concurrently with submission of its submerged lands lease application under this section and shall provide a copy of any such applications to the director upon request.
- (3) The director shall provide notice to the Marine Resources Advisory Council under section 6024 and any lobster management policy council established pursuant to section 6447 in whose or within 3 miles of whose designated lobster management zone created pursuant to section 6446 the proposed development is located. The Marine Resources Advisory Council and any lobster management policy council notified pursuant to this subparagraph may provide comments within a reasonable period established by the director, and the director shall consider the comments in making findings pursuant to subsection 2, paragraph A, subparagraph (6).
- (4) The director may issue a lease or easement for a hydropower project, as defined in Title 38, section 632, subsection 3, that uses tidal or wave action as a source of electrical or mechanical power, for a term not to exceed 50 years, as long as the lease term is less than or equal to the term of the license for the project issued by the Federal Energy Regulatory Commission.
- (5) If requested by an applicant, and with provision for public notice and comment, the director may issue one or more of the following for a renewable ocean energy project prior to issuance of a 30-year lease for the project:
 - (a) A lease option, for a term not to exceed 2 years, that establishes that the leaseholder, for purposes of consideration of its application for state permit approvals under chapter 206-A or Title 38, chapter 3, subchapter 1, article 5-A or 6 or Title 38, chapter 5, subchapter 1, article

1, subarticle 1-B, as applicable, has title, right or interest in a specific area of state submerged lands needed to achieve the purposes of the project as described in conceptual plans in the lease application;

(b) A submerged lands lease, for a term not to exceed 3 years, that authorizes the leaseholder to undertake feasibility testing and predevelopment monitoring for ecological and human use impacts as described in conceptual plans in the lease application and conditioned on receipt of requisite federal, state and local approvals; and

(c) A submerged lands lease, for a term not to exceed 5 years, that authorizes the leaseholder to secure requisite federal, state and local approvals and complete preoperation construction, as long as the applicant provides detailed development plans describing all operational conditions and restrictions.

(6) Except as otherwise provided in this paragraph, the annual rent for a wind energy demonstration project for which a general permit has been issued under Title 38, section 480-HH is \$10,000 per year for the term of the general permit. The annual rent for a tidal energy demonstration project for which a general permit has been issued under Title 38, section 636-A is \$100 per acre of submerged lands occupied by the project for the term of the general project, except that the annual rent may not exceed \$10,000. As used in this paragraph, "submerged lands occupied" includes the sum of the area on which turbines, testing and monitoring equipment, anchoring or mooring lines, submerged transmission cables or other structures are placed and any additional area from which the director finds it necessary to exclude transient public trust uses to avoid unreasonable interference with the project's purposes. An annual rent is not required for an offshore wind energy demonstration project located in the Maine Offshore Wind Energy Research Center, as designated by the department under section 1868, subsection 2.

(7) The director shall charge a lessee an annual rent in accordance with a fee schedule, established by the bureau by rule, that balances state goals of assurance of fair compensation for use and mitigation of potential adverse effects on or conflict with existing uses of state-owned submerged lands that are held in trust for the people of the State with state renewable ocean energy-related goals, including state wind energy generation goals established in Title 35-A, section 3404, subsection 2. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(8) The director may not require additional public compensation pursuant to subsection 9.

(9) The director may issue a lease for a buffer zone comprising a land or water area around permanent structures located on submerged or intertidal land if:

(a) The director determines such a buffer zone is necessary to preserve the integrity or safety of the structure or fulfill the purposes of the project; and

(b) The director consults with the Commissioner of Marine Resources regarding the need for such a buffer, its location and size and options to minimize its potential effects on existing uses. [2009, c. 615, Pt. B, §1 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2011, c. 682, §38 (REV); 2013, c. 405, Pt. A, §24 (REV).]

[2009, c. 615, Pt. B, §1 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2011, c. 682, §38 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

SECTION HISTORY

1997, c. 678, §13 (NEW). 2001, c. 604, §12 (AMD). 2003, c. 254, §§1,2 (AMD). 2005, c. 134, §§2,3 (AMD). 2007, c. 540, §1 (AMD). 2009, c. 270, Pt. B, §1 (AMD). 2009, c. 316, §§1-6 (AMD). 2009, c. 316, §7 (AFF). 2009, c. 615, Pt. B, §1 (AMD). 2011, c. 657, Pt. W, §7 (REV). 2011, c. 682, §38 (REV). 2013, c. 256, §§9, 10 (AMD). 2013, c. 405, Pt. A, §24 (REV).

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